

Part 13 Bankruptcy

340 Bankruptcy (7 CFR 762.148(a))

A

Overview

The lender must protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings.

Lenders can apply to FSA to recover principal, interest, and certain expenses lost as a result of bankruptcy proceedings.

341 Lender's Responsibilities in Bankruptcy Proceedings (7 CFR 762.148(a))

A

**Lender
Responsibilities
in Bankruptcy
Cases**

Lenders must satisfy all requirements pertaining to a creditor in a bankruptcy proceeding, including the procedures under Chapter 7 (Liquidation), Chapter 11 (Reorganization), Chapter 12 (Adjustment of Debts of a Family Farmer with Regular Annual Income), or Chapter 13 (Adjustment of Debts of an Individual with Regular Income) of the Bankruptcy Code (Title 11 of the United States Code), whichever is applicable. Lenders must ensure that a valid proof of claim is submitted; that collateral securing the guaranteed loan is protected; and that all rights of participation are exercised or protected. **The lender's responsibilities include, but are not limited to,** the following requirements.

- C Filing a proof of claim where required and all the necessary papers and pleadings.** If the loan includes FSA-1980-89, it must be included in the lender's proof of claim. See paragraph 288.
 - C Attending, and where necessary, participating in meetings of the creditors and court proceedings.**
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341 Lender's Responsibilities in Bankruptcy Proceedings (7 CFR 762.148(a)) (Continued)

A**Lender
Responsibilities
in Bankruptcy
Cases
(Continued)**

- C Protecting the collateral securing the guaranteed loan and resisting any adverse changes that may be made to the collateral.** If the debtor remains in possession, the lender must monitor for any adverse changes that may be made to the collateral and resist those changes by legal action, repossession of the collateral, or other suitable means. If the trustee in bankruptcy has assumed jurisdiction over the collateral, the lender must cooperate with the trustee in the administration of the estate. Such cooperation, however, should not preclude the lender from opposing actions of the trustee that do not advance the interests of the lender. The lender should attend and observe any public sales of collateral held by the trustee, and if appropriate submit a minimum bid.
- C Seeking a dismissal of the bankruptcy proceeding when the operation as proposed by the borrower to the bankruptcy court is not feasible.**
- C Monitor confirmed plans under chapters 11, 12, and 13 of the bankruptcy code to determine borrower compliance. If the borrower fails to comply, the lender will seek a dismissal of the reorganization plan.**
- C When permitted by the bankruptcy code, requesting a modification of any plan of reorganization if it appears additional recoveries are likely.**
- C Keeping the Agency regularly informed in writing of all aspects of the proceedings.**
 - C The lender will submit a regular default status report when the borrower defaults and should inform FSA of all significant steps in the bankruptcy proceeding, including the dates and pertinent details concerning:**
 - C confirmation of the plan**
 - C effective date of the plan**
 - C date the plan is completed**
 - C failure of the debtor to comply with the plan**
 - C discharge of the debtor.**

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341 Lender's Responsibilities in Bankruptcy Proceedings (7 CFR 762.148(a)) (Continued)

A**Lender
Responsibilities
in Bankruptcy
Cases
(Continued)**

- C The lender shall submit a default status report when the borrower defaults and every 60 days until the default is resolved or a final loss claim is paid.** The initial Default Status Report is sent to the local credit office immediately following the lender-borrower default meeting (see paragraph 313).
 - C The default status report will be used to inform the Agency of the bankruptcy filing, the reorganization plan confirmation date and effective date, when the reorganization plan is complete, and when the borrower is not in compliance with the reorganization plan.**
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342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148)

A**Claims for
Expenses in
Reorganizations**

Lenders will be compensated for expenses and losses incurred as a result of a Chapter 11, 12, or 13 bankruptcy proceeding as follows:

- C Lender's in-house expenses, which are those expenses which would normally be incurred for administration of the loan, including in-house lawyers, are not covered by the guarantee.**
 - C Expenses paid by lenders to third parties will be compensated as follows.**
 - C Expenses, such as legal fees, and the cost of appraisals incurred by the lender as a direct result of the borrower's Chapter 11, 12, or 13 reorganization, are covered under the guarantee, provided they are reasonable, customary, and provide a demonstrated economic benefit to the lender and the Agency and will be paid upon satisfactory claim by the lender.** Such expenses must be incurred following the filing of a voluntary petition by the borrower, and must be incurred before discharge of the debtor. Such third party costs must be reasonable and appropriate, and must be documented in the lender's files. Reasonable and appropriate generally will be determined by the commercial standards and practices in that location, and should be typical for the unguaranteed loans of the lender. Appraisal costs significantly higher than typical appraisal costs for a similar appraisal in the same part of the country by an appraiser of similar experience, for example, might be unreasonable.
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342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148) (Continued)

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Claims for Expenses in Reorganizations (Continued)

***--Note:** RD-449-30 is not designed to include legal fees as part of a loss claim. Legal fees incurred in a reorganization should be combined with any protective advances applicable and included in item 13 until RD-449-30 is changed to include legal fees separately. To ensure proper accounting of the claim, an explanatory memorandum should accompany the loss claim when it is sent to the Finance Office. When reviewing the ledger provided with a loss claim, it should be noted that interest may accrue on protective advances; however, interest that accrues on legal fees paid by the lender are not covered by the Guarantee.--*

- C Claims for expenses in reorganizations may be combined with claims for estimated losses of principal and interest or protective advances, but will not be paid the lender before plan confirmation.
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B

Claims for Estimated Losses of Principal and Interest in Reorganizations

Lenders may submit a claim for losses of principal and interest sustained as a result of a reorganization plan in a bankruptcy reorganization proceeding.

- C Claims should be submitted using RD-449-30 to the Authorized Agency Official. The Authorized Agency Official shall review the claim using FSA-1980-06 and either request modifications by the lender or forward the claim to SED with recommendations and supporting documents as necessary.
- C **At confirmation, the lender may submit an estimated loss claim upon confirmation of the reorganization plan in accordance with the following:**
The initial estimated loss claim must include a copy of the confirmed bankruptcy plan and a memorandum clearly indicating the plan confirmation date, the date the plan is to go into effect, and any other relevant information concerning the loan and the loss claim, or such supporting documentation must be supplied immediately following confirmation of the plan. The loss will be paid as of the plan effective date with no additional interest accrual after that date.
- C **The estimated loss claim will cover the guaranteed percentage of the principal and accrued interest written off, plus any allowable costs incurred as of the effective date of the plan.**
- C **The lender will submit supporting documentation for the loss claim.**
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342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148) (Continued)

B

**Claims for
Estimated Losses
of Principal and
Interest in
Reorganizations
(Continued)**

C The estimated loss payment may be revised as consistent with a court-approved reorganization plan.

C*--The estimated loss claim may be revised after a court approved partial liquidation of the collateral. When this occurs, the revised claim will be based upon the actual value received for the liquidated collateral as long as the lender made every effort to ensure that maximum proceeds were received.--*

C

**Claims for
Estimated
Interest-Only
Losses in
Reorganizations**

Lenders may submit an estimated loss claim for interest only after confirmation of the reorganization plan in accordance with the following.

C Claims should be submitted using RD-449-30 to the Authorized Agency Official.

C The interest-only estimated loss claim can be approved only after confirmation date of the reorganization plan.

C The initial interest-only estimated loss claim may include a claim for interest accrued to the effective date of the reorganization plan (the date when the plan becomes effective). This date may be later than the date the plan is approved by the court, the confirmation date. This loss will be paid as of the plan effective date with no additional interest accrual after that date.

C If the lender has a variable rate that remains at or below the court-ordered rate during the claim period, no loss claim may be submitted.

C Subsequent claims for interest-only estimated losses covering 1-year periods following the effective date of the reorganization plan may be submitted annually, and will be processed on the anniversary date of the effective date of the reorganization plan or immediately thereafter.

C The loss claims may cover interest losses sustained as a result of court-ordered, permanent interest rate reduction.

C The loss claims will be processed annually on the anniversary date of the effective date of the reorganization plan.

*--**Note:** Loss claims may also be processed immediately following the payment due date established in the reorganization plan and on that date annually thereafter.--*

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342 Lender's Claims for Expenses and Estimated Losses in Reorganization Bankruptcy Proceedings (7 CFR 762.148) (Continued)

C

**Claims for
Estimated
Interest-Only
Losses in
Reorganizations
(Continued)**

- Ⓒ If the borrower performs under the terms of the reorganization plan, annual interest reduction loss claims will be submitted on or near the same date, beyond the period of the reorganization plan.**
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D

**Claims for
Reimbursement
of Protective
Advances in
Reorganizations**

Protective advances made and approved in accordance with § 762.149 may be included in an estimated loss claim associated with a reorganization, if:

- Ⓒ they were incurred in connection with the initiation of liquidation action prior to bankruptcy filing**
- Ⓒ the advance is required to provide repairs, insurance, etc. to protect the collateral as a result of delays in the case or failure of the borrower to maintain the security.**

--Interest that accrues on protective advances will accrue only to the effective date of the reorganization plan.--

E

**Claims for Actual
Losses in
Reorganizations**

Once the reorganization plan is complete, the lender will provide the Agency with documentation of the actual loss sustained.

- Ⓒ If the actual loss sustained is greater than the estimated loss payment, the lender may submit a revised estimated loss claim to obtain payment of the additional amount owed by the Agency under the guarantee.**
- Ⓒ If the actual loss is less than the prior estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.**
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F

**Payment to
Holder in
Reorganizations**

In reorganization bankruptcy, if a holder makes demand upon the Agency, the Agency will pay the holder interest to the plan's effective date. Accruing interest thereafter will be based upon the provisions of the reorganization *--plan. For lender and FSA responsibilities upon FSA repurchase, see subparagraph 376 B.--*

343 Lender's Claims for Expenses and Estimated Losses in Liquidation Bankruptcy Proceedings (7 CFR 762.148)

A**Claims for Expenses in Liquidation**

[7 CFR 762.148(b)] Reasonable and customary liquidation expenses may be deducted from the proceeds of the collateral in liquidation bankruptcy cases *-- or in reorganization bankruptcy where the plan calls for a partial liquidation of the collateral.--*

- Ⓒ In-house expenses are not considered reasonable and customary liquidation expenses and may not be deducted from collateral proceeds.**
 - Ⓒ [7 CFR 762.148(d)] Upon receipt of notification that a borrower has filed for protection under Chapter 7 of the Bankruptcy Code, or upon confirmation of a liquidation plan under Chapter 11, the lender must proceed according to the liquidation procedures of this part (Part 14).**
 - Ⓒ If the property is abandoned by the trustee , the lender will conduct the liquidation according to § 762.149, and seek to realize value from the property.**
 - Ⓒ Proceeds received from partial sale of collateral during bankruptcy may be used by the lender to pay reasonable costs, such as freight, labor and sales commissions, associated with the partial sale. Reasonable use of proceeds for this purpose must be documented with the final loss claim in accordance with § 762.149(a)(vi).**
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344 FSA Responsibilities in Bankruptcy Proceedings

A**Agency
Monitoring**

The Authorized Agency Official must review the default status report, submitted by the lender and periodically monitor the lender's files to ensure that all necessary actions are taken by the lender concerning a bankruptcy case. This review should include verifying that the lender:

- Ⓒ files proof of claim and all necessary papers and pleadings concerning the case
- Ⓒ attends and where necessary participates in meetings of the creditors and all court proceedings
- Ⓒ seeks adequate protection of the collateral
- Ⓒ advises the Authorized Agency Official of the status of the bankruptcy action
- Ⓒ requests modification or dismissal of any plan of reorganization if it appears that additional recoveries are likely or if the borrower fails to comply with the requirements of the plan.

During a bankruptcy proceeding, the Authorized Agency Official must:

- Ⓒ determine the necessity of an independent appraisal of collateral
 - Ⓒ review documentation supporting loss claims, including expense claims, submitted by the lender.
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B**Review of
Bankruptcy Loss
Claim**

The Authorized Agency Official must:

- Ⓒ review RD-449-30 submitted by the lender, for accuracy, to ensure that RD-449-30 is coded correctly
- Ⓒ accept the loss claim or contact the lender to obtain revisions or additional information
- Ⓒ forward the claim to SED or its designee.

All loss claims must be approved by SED. Following approval, SED shall forward approved loss claims to the Finance Office.

345-354 (Reserved)